

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: F7453-A2; 6-86-181-A1

Applicant: Ritchard & Agnetha Stephenson

Original Description F7453 Subdivision of 40.2 acres into 27 lots of between 21,000 sq.ft. to 40,000 sq.ft. each (except lot#1) for the future construction of 25 single-family detached residential units, including landscaping, roads and utilities. Access will be provided by the easterly extension of San Dieguito Drive through a 52' right-of-way with a 32' paved road. No building construction is included; individual development of parcels will proceed in accordance with an approved master development plan to be implemented through specific lot restrictions.

Original Description 6-86-181 Construction of 13 single-family residences on Lots 11 through 23 of the subdivision approved pursuant to CDP #F7453.

Proposed Amendment: F7453-A2 Revise lot development restrictions to allow maximum lot coverage to increase from 3,000 sq.ft. to 4,656 sq.ft., but only on the subject lot. This amendment will require a modification to the previously recorded deed restriction, but it will only modify that deed restriction as it applies to the subject site.

Proposed Amendment: 6-86-181-A1 Construct an attached, one-story, 1,300 sq.ft. garage/workshop addition to the existing 3,356 sq.ft. single-family residence; and after-the-fact approval of swimming pool, concrete slab, and previous unpermitted 356 sq.ft. residential addition on a 36,000 sq.ft. lot.

Site: 3070 Racetrack View Drive, North City, San Diego, San Diego County.
APN 300-490-18

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed amendments to: (1) Revise lot development restrictions on the subject lot to allow a residential addition on APN 300-490-18 that would result in total lot coverage greater than 3,000 sq. ft. and; (2) request after-the-fact approval of a swimming pool, concrete slab, and previous unpermitted 356 sq.ft. residential addition. The subject site is in a highly visible area in the San Dieguito Lagoon River Valley. However, the subject site is a part of a larger subdivision on which substantial requirements for view

protection, including the provision of landscaping and color restrictions, were placed through approval of the original permit. Therefore, as conditioned to require landscaping and color restrictions consistent with the existing requirements for the subdivision, the proposed addition on this particular site only, will not have an adverse impact on the scenic environment. Because minimizing the visual impacts of the proposed addition is dependent on the maintenance of appropriate landscape screening, and because the site is adjacent to an environmentally sensitive lagoon, Special Conditions also require the removal of existing exotic bamboo landscaping alongside the proposed addition and replacement with landscaping compatible with the lagoon environment that will also serve to screen the structure. Other exotic vegetation on the site must also be removed and replaced with non-invasive species. Other conditions require the implementation of a drainage control plan, submittal of as-built plans, a time limit on the satisfaction of the special conditions, and recordation of a deed restrictions to address the various changes.

Due to space constraints, the description of the first amendment to CDP #F7453 was not included on the front page:

First Amendment: Amend Special Condition #5 of original permit pertaining to the construction of a permanent road across the mouth of Crest Canyon.
F7453-A1

Substantive File Documents: Letter from William T. Everett, Everett and Associates, Environmental Consultants, dated December 5, 2004; CDP #6-86-181; Certified North City Land Use Plan.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendments to Coastal Development Permit No. F7453 and No. 6-86-181 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendments as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE PERMIT AMENDMENTS:

The Commission hereby approves the coastal development permit amendments on the ground that the development, as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program. Approval of the permit amendments complies with the California Environmental Quality Act because either 1)

feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

This permit action is subject to the following conditions, which, among other things, impose changes to existing special conditions and add new special conditions.

The following Special Conditions shall apply to CDP #6-86-181-A1:

1. Final Landscape Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, a final landscape plan that has been stamped approved by the City of San Diego. Said plan shall be developed in consultation with the California Department of Fish and Game and shall include the following:

- a. The removal of the bamboo located adjacent to the retaining wall along the southern boundary of the site, and replacement with new vegetation that is native or drought-tolerant and non-invasive, and shall, at maturity, reach a height no lower than the height of the approved addition.
- b. The plan shall also indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features on the site. The plan shall indicate that any existing invasive species will be removed and replaced with fire resistant, native or drought-tolerant materials. No invasive species are permitted.
- c. A planting schedule that indicates that all new plantings will be implemented within 60 days of completion of construction.
- d. A written commitment by the applicant that all required plantings will be maintained in good growing condition, and whenever necessary, will be replaced with new plant materials to ensure continued compliance.
- e. A written commitment by the applicant that five years from the date of the receipt of the Certificate of Occupancy for the residential addition, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in

the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake development in accordance with the approved landscaping plans. Any proposed changes to the approved landscaping plans shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Exterior Treatment. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for the review and approval in writing of the Executive Director, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residential addition. The color of the structure and roof permitted hereby shall be restricted to colors compatible with the surrounding environment.

The permittee shall undertake the development in accordance with the color board.. Any proposed changes to the approved color board shall be reported to the Executive Director. No changes to the color board shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Final Drainage Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, final drainage and runoff control plans that have been approved in writing by the City of San Diego. The plans shall specifically document either graphically or through written notes on the plan that the runoff from the addition's roof area and other impervious surfaces associated with the addition and the pool will be directed into pervious areas on the site (landscaped areas) for infiltration and/or percolation, prior to being conveyed off-site.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal

Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment 6-86-181-A1, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Condition Compliance. **WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP AMENDMENT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6. Submittal of As-Built Plans. **WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT AUTHORIZED BY PERMIT AMENDMENT #6-86-181-A1 OR IMMEDIATELY FOLLOWING ANY PERIOD OF WORK STOPPAGE OF MORE THAN 60 DAYS**, the permittee shall submit as-built plans of the approved addition consistent with the plans by Joe B. Kroi & Associates, dated 11/04/02.

7. Future Development. This permit amendment #6-86-181 is only for the development described above as the proposed amendment to permit #6-86-181. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, change in the density or intensity of use land, shall require an amendment to Permit #6-86-181 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

8. Prior Conditions of Approval. All previously existing terms and conditions of the approval of Coastal Development Permit #6-86-181 shall remain in full force and effect.

The following Special Conditions shall apply to CDP #F7453:

1. Modification of Special Condition #3 of CDP No. F7453. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT F7453-A2**, the applicants shall modify Special Condition #3 of CDP #F7453 by adding the following text to the end of the condition and doing all of the following:

Prior to Issuance of Coastal Development Permit Amendment F7453-A2, the applicants shall do all of the following:

a. Execute and record an amendment, in a form and content acceptable to the Executive Director, to the deed restriction recorded pursuant to this condition, which deed restriction was recorded on August 8, 1983 in the Office of the County Recorder of the County of San Diego as Instrument Number 83-276026 (“Deed Restriction”), as it applies to the subject lot only. The amendment shall indicate that, notwithstanding the site design concept attached as Exhibit “C” to the Deed Restriction, the maximum lot coverage **for the subject lot** shall be 4,656 square feet, the permitted building level **for the subject lot** shall be one-story, and the front yard setback **for the subject lot** shall be pursuant to applicable zoning under the San Diego Municipal Code. The existing terms of the Deed Restriction shall continue to apply to all other lots covered by the deed restriction.

b. Submit evidence to the Executive Director demonstrating that a new amendment, in a form and content acceptable to the Executive Director, to the Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) recorded on October 17, 1986, in the Office of the County Recorder of the County of San Diego as Instrument Number 86-470295 has been recorded. The new amendment shall eliminate purported changes to the Deed Restriction made through the amendment to the CC&Rs recorded on July 19, 2004, in the Office of the County Recorder of the County of San Diego as Instrument Number 2004-0669411. The new amendment shall be consistent with the Deed Restriction, as amended, and shall clarify that the Deed Restriction cannot be altered in the future through the recordation of an amendment to these CC&Rs.

2. Condition Compliance. **WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP AMENDMENT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

3. Prior Conditions of Approval. All other terms and conditions of the approval of Coastal Development Permit #F7453, as amended, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The proposed project involves the construction of a one-story, 1,300 sq.ft. garage/workshop addition. The proposed workshop would be attached to an existing one-story 3,356 sq.ft. single-family residence; the existing 645 sq.ft. attached garage would be converted into living space. The proposed project also includes after-the-fact approval of unpermitted development consisting of the construction of a swimming pool, and placement of concrete slab. As discussed below, the original subdivision permit limited construction on the subject site to a maximum lot coverage of 3,000 sq.ft. Therefore, at some point in the past, either a

356 sq.ft. residential addition was constructed without permits, or the original residence was built 356 sq.ft. larger than permitted. Thus, after-the-fact approval of a 356 sq.ft. of residential construction is also included in the subject amendment. The pool was constructed in early 2000 without the required coastal permit. A portion of the garage/workshop expansion has also already taken place, in the form of a concrete slab poured adjacent to the site without the required coastal permit. Other development that has occurred on the lot includes construction of a retaining wall along the southern boundary of the site, which is exempt from coastal development permit requirements.

The 36,000 sq.ft. lot is located near the terminus of Racetrack Drive, just west of Interstate 5, overlooking San Dieguito Lagoon in the City of San Diego. The City of San Diego has a fully-certified LCP and issues its own coastal development permits for most of its coastal areas, including the subject site. However, the proposed project requires amendment of a past commission permit on the site (#F7453), which placed strict limits on building size and lot coverage.

The Coastal Commission approved permit #F7453 for subdivision of 40.2 acres into 27 lots, including the subject site on May 4, 1979 (see Exhibit #3). The project was approved with nine special conditions covering the preservation of open space, floodplain area, grading, lot density, building size, and landscaping, to list a few. Most relevant to the subject application is Special Condition #3, which required, in part:

- d. (All parcels) – Maximum lot coverage, permitted building levels, and front yard setbacks shall be specified according to an overall site design concept submitted to and approved in writing by the Executive Director prior to the recordation of required deed restrictions.

In response to Condition #3d's requirement of an "overall site design concept," detailed site development restrictions were developed and recorded as a restriction on the property (see deed restriction attached to Exhibit #3). These restrictions limit the building area on the subject site to a maximum of 3,000 sq.ft., and one-story. Thus, the proposed addition, which will result in a structure 4,656 sq.ft. in size, requires an amendment to the original permit and the deed restriction recorded pursuant thereto.

On March 6, 1981, the Commission approved amendment #F7453 (A1), adjusting some of the terms of the original permit (see Exhibit #4).

In May 1986, the Commission approved permit #6-86-181 for construction of 13 single-family residences on Lots 11 through 23 of the subdivision, including the subject site (see Exhibit #5). At that time, the Commission also approved construction of 10 single-family residences on Lots 1 through 10 (#6-86-131). This permit was amended in April 1990 to restore a portion of the required open space that had been damaged by the construction of a tee-off for a golf driving range (#6-86-131-A).

As noted, the site is located within the City of San Diego's permit jurisdiction, within the Torrey Pines Community Planning Area, which is part of the certified North City Local

Coastal Program (LCP) segment. The standard of review for the project is the certified LCP and the public access and recreation policies of the Coastal Act.

Deed Restrictions and CC&Rs

Permit F7453 required the lot development restrictions required by the above-reference Special Condition #3 be recorded on the deed of each individual parcel in the subdivision. The Deed Restriction was recorded August 1983 as Document Number 83-276026. In addition, the restrictions were incorporated in the subdivision's Declaration of Covenants, Conditions and Restrictions (CC&Rs), which were recorded in October 1986, as Document Number 86-470295.

On July 19, 2004, the applicants, and several of the other homeowners in the subject subdivision, recorded an amendment to the Declaration of Covenants, Conditions and Restrictions of Del Mar Estates Subdivision, which purports to amend the 1983 Deed Restriction (which is Exhibit B to the CC&Rs), at least as it exists for purposes of those CC&Rs, by eliminating the lot coverage restrictions imposed by paragraph 4 (and Exhibit C) of the 1983 Deed Restriction, and which includes language amending Article II, section 2.8 of the CC&Rs that could be interpreted to eliminate the restrictions and/or requirements in paragraphs 1 through 5 of the 1983 Deed Restriction.

In other words, the applicants appear to have attempted to remove the restrictions placed on the subject site through CDP #F7453 by removing the conditions imposed in that permit action as they had been incorporated into the community's CC&Rs. However, no change to the CC&Rs could have any effect on the underlying permit, the conditions of which run with the land. Moreover, although the CC&Rs incorporated the existing deed restriction by reference, the purported changes to that document, as incorporated by reference, did not in any way alter or affect the original deed restriction itself, so the deed restriction continued in effect. To the extent the restrictions in the deed restriction were also imposed through these CC&Rs, they were duplicative requirements. This purported change to the CC&Rs did not purport to affect, nor could it have affected, the restriction imposed by paragraph 4 of the deed restriction as that restriction existed pursuant to the deed restriction itself, which continued to exist as an independent and effective imposition of restrictions on the use and enjoyment of the property, separate from the CC&Rs.

2. Visual Impacts. The certified Torrey Pines Community Plan is the applicable land use plan for the subject site, and contains the following policies regarding scenic and visual quality:

RESOURCE MANAGEMENT AND OPEN SPACE ELEMENT

San Dieguito Lagoon and River Valley

1. New development or expansion of existing uses adjacent to the lagoon shall not encroach into or negatively impact this open space area.

4. Development adjacent to the lagoon should be designed to avoid sedimentation, erosion or other potential impacts which degrade the quality of the water resources, and should preserve existing public views. The following measures to reduce grading impacts should be utilized where appropriate: minimize grading during the rainy season, install sediment basins and/or energy dissipating structures, and ensure revegetation and stabilization of slopes before the onset of the rainy season. To reduce visual impacts, development should be low-profile and screened from view by landscaped buffers.
7. Maintain and enhance the experience of nature within the lagoon, by screening present conflicting uses, prohibiting future conflicting uses, retaining natural areas and promoting an expanded water body within the lagoon.

RESIDENTIAL ELEMENT

- The 27-lot residential subdivision of Del Mar Estates is located in the northern portion of the community along Racetrack View Drive. This development includes large single-family detached homes of 25 feet in height on large (average one acre) lots, and over 17 acres set aside in an open space easement. This development is located in an environmentally sensitive location, within the Focused Planning Area of the San Dieguito Regional Open Space Park Plan, situated south of the San Dieguito River and Lagoon and north of Crest Canyon. Because of the area's sensitivity, additional development (tennis courts, pools, decks, gardens, walls, lighting, etc.) shall minimize or eliminate impacts to these resource areas.

Additional policies in the Torrey Pines Community Plan are designated “LOCAL COASTAL PROGRAM POLICIES” and include:

VISUAL RESOURCES

The State Coastal Act states that the scenic and visual qualities of the coastal areas shall be considered and protected as a resource of public importance. The Torrey Pines Community Planning Area possesses many highly scenic open space areas and dramatic vistas. Torrey Pines also has a number of road segments that have scenic qualities worthy of formal recognition and protection. This community plan contains numerous recommendations, policies and implementing actions focusing on the preservation of these visual resources including:

1. Significant scenic resource areas including San Dieguito River Regional Park, Crest Canyon, Torrey Pines State Reserve Extension, Los Peñasquitos Lagoon, and the Carroll Canyon Creek Corridor have been designated and rezoned to open space.

5. Landscaping of properties adjacent to open space areas shall not use invasive plant species. Landscaping adjacent to these areas should use plant species naturally occurring in that area.
6. New residential development is recommended to be compatible with the existing neighborhood, and designed to blend into adjacent natural open space areas.
11. The plan recommends the preservation of Torrey Pines trees, and encourages the planting of Torrey Pines trees in roadways and other landscaped areas.

The project site is a developed lot in a subdivision adjacent to the west side of Interstate 5, north of San Dieguito Lagoon. The subdivision is in a highly visible area from surrounding areas, including I-5, the San Dieguito River Valley, Via de la Valle, and the Del Mar Racetrack and Fairgrounds. In order to reduce the visibility of development, previous Commission actions on the site included numerous conditions and restrictions on development of the site. For the subdivision (CDP #F7453), these conditions included the dedication of open space adjacent to development, density restrictions, limits on maximum lot coverage, setbacks and building heights, limits on grading of steep slopes, and the preservation of Torrey Pine trees. For the construction of the residences (CDP #6-86-181), conditions included requirements for hydroseeding cut slopes and limiting the colors of exterior surfaces to those compatible with the native environment.

At the time that the subdivision, and later the residences, were constructed, the graded pads and slopes, the streets, and the structures were extremely visually prominent, particularly given the development's location nestled in at the base of a natural hillside adjacent to a lagoon and the lack of existing mature vegetation. However, over time, the significant amount of landscaping associated with each lot has greatly minimized the visibility and appearance of the development. Some lots in the subdivision are more visible than others, of course; however, at this point, only the rooftops of most residences, and some of the cut slopes associated with the lots, particularly those lots on the southern portion of the lot (which are higher in elevation) are visible from surrounding public areas.

With regard to the subject site, the property is one of the lots located closest to the lagoon, and it is located on the western, or lagoon-side of the access road. However, the proposed additions would not be visible from surrounding areas for several reasons. First, and most significantly, as noted, the subject site and the surrounding lots have significant amounts of mature landscaping. Just west of the site's western property line, a row of mature Torrey Pine trees shields views of the site from the west and north. Second, while grading, removal of trees, or increase in height of the existing structure could potentially increase the visibility of the site, the proposed project consists only of an in-ground pool and a single-story addition to the southwestern side of the site. As such, existing landscaping on the site and on the adjacent site to the north, as well as the other residences located to the north, help to screen views of the site from Jimmy Durante Boulevard, Via de la Valle, the fairgrounds, and the trails around the lagoon. Thirdly, with regard to views from the freeway, the subject site is at a fairly low elevation

compared to some of the lots, and thus, the visibility of the site from the freeway is relatively low. In addition, a tall row of bamboo located on the southern side of the lot, adjacent to the proposed addition helps to provide a canopy of vegetation along that side of the lot, reducing views from the freeway.

In this particular case, allowing an increase in the maximum lot coverage to 4,656 sq. ft. will not impact the surrounding resource areas or negatively impact the adjacent open space area. However, although no portion of the proposed addition in this particular case will have an adverse visual impact, the Commission continues to be concerned that the development continue minimize or eliminate impacts to the San Dieguito River and Lagoon, blend into adjacent natural open space areas and be screened from view by landscaped buffers, as required by the above-referenced land use plan policies. Since the development was approved, the San Dieguito Lagoon Restoration Plan currently under development has identified several vista points in the vicinity of the site, and a trail adjacent to the site has been formalized. Preserving the scenic quality of the area continues to be a high priority. Significant changes to the existing landscaping, the height of the existing structure, or changes to the color of the structure could result in visual impacts. The permit for construction of the residence required that the exterior surface of the proposed residences to be compatible with the native environment” (CDP #6-86-181). Therefore, Special Condition #2 of amendment #6-86-181-A1 requires that the addition be consistent with the requirement of the original permit and be restricted to colors compatible with the surrounding environment.

As noted, the bamboo associated with construction of the retaining wall contributes to the canopy of vegetation on the site. However, bamboo, as discussed in detail below in Section 3. Biological Resources, is an inappropriate plant material to use for screening purposes, because of potential impacts to the adjacent lagoon environment. Therefore, Special Condition #1 of amendment #6-86-181-A1 requires submittal of a landscaping plan indicating that the bamboo will be replaced with a non-invasive plant that will, at maturity, be at least as tall as the proposed addition. In this manner, both the existing residence and the proposed addition will be screened from view. Special Condition #4 of amendment #6-86-181-A1 requires the applicant to record a deed restriction imposing the conditions of this amendment, (not including the conditions that were previously imposed on the original permit), as covenants, conditions and restrictions on the use and enjoyment of the property. This restriction will serve to notify future owners of the on-going requirements for landscaping and coloring. Special Condition #7 of amendment #6-86-181-A1 advises the applicant that future development on site may require a new permit or an additional amendment.

In addition, it is important that the proposed project not be seen as setting a precedent for any and all future residential construction in the subdivision. The restrictions on lot coverage still apply to the remaining residences, pursuant to the original subdivision permit. The visual and biological impacts of new development in this area that would be inconsistent with the original restrictions must be assessed on a case-by-case basis. For example, adding a new story to any of the existing residences would likely be highly visible, and may not be consistent with the certified LUP or even single-story additions that require substantial grading may be inconsistent with scenic preservation provisions

of the LCP. Special Condition #8 of amendment #6-86-181 and Special Condition #3 of amendment #F7453-A2 indicate that with the exception of the conditions modified herein, all of the other terms and conditions of Coastal Development Permits #6-86-181 and #F7453, as amended, remain in full force and effect, thus continuing to protect scenic resources, consistent with the LCP and the original Commission actions.

In summary, as conditioned, the proposed residential addition will take place in a location and manner that will ensure visual impacts are minimized and that existing public views are preserved. The site is well screened by existing landscaping, and new landscaping consistent with the lagoon environment will ensure that both the existing residence and the proposed addition continue to be screened from view by landscaped buffers in the future. Therefore, the proposed project is consistent with the visual protection policies of the certified LCP.

3. Biological Resources. In addition to the policies cited above, the certified Torrey Pines Community Plan contains the following policies regarding biological resources,

RESOURCE MANAGEMENT AND OPEN SPACE ELEMENT

POLICIES

1. Land uses adjacent to environmentally sensitive habitats shall not negatively impact those areas.
2. Development impacts to rare, threatened, endangered, or candidate species shall be minimized or eliminated.
3. No filling, clearing, grubbing, or other disturbance of biologically sensitive habitats shall be permitted without approved mitigation plans.
4. Coastal lagoons and estuaries that are designated and zoned open space shall remain undeveloped.
5. Public access in areas of environmentally sensitive habitats shall be limited to low-intensity recreational, scientific, or educational use. Access shall be controlled or confined to designated trails or paths, and no access shall be approved which results in disruption of habitat.
8. Preserve and enhance all open space and wildlife corridors (see Figure 6), especially those linking Los Peñasquitos Lagoon with Torrey Pines State Reserve Extension and the Carroll Canyon Creek corridor.

San Dieguito Lagoon and River Valley

6. Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

Additional policies in the Torrey Pines Community Plan are designated “LOCAL COASTAL PROGRAM POLICIES” and include:

WETLANDS

Buffer zones sufficient to protect wetlands shall generally be 100 feet in width, unless the applicant demonstrates that a smaller buffer will protect the resources of the wetland based on site-specific information including but not limited to the type and size of the development and/or proposed mitigation which will also achieve the purposes of the buffer. Developments permitted in wetland buffer areas shall be limited to access paths, passive recreational areas, fences and similar improvement necessary to protect the wetland. Developments shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its fish and wildlife values, or otherwise impair the functional capacity of the wetland.

The subject site is fully developed with a single-family residence, hardscape and landscaping, but the lot is located south of and adjacent to the San Dieguito Lagoon and the floodplain of the San Dieguito River. As part of the original subdivision that created the subject site, an open space easement for the protection of wildlife, steep slopes, scenic and visual amenities, and flood hazards, was placed over the land located adjacent to the subject lot to the west. The protected area is upland of and separated from the lagoon by a fenced gravel trail. This area is within the overall scope of the San Dieguito Lagoon Restoration Plan area overseen by the San Dieguito River Park Joint Powers Authority, and is currently the site of a coastal sage scrub restoration plan being undertaken by Caltrans as mitigation for impacts associated with the construction of a northbound auxiliary lane on Interstate 5 (CDP #6-02-153).

In May, 1986, the Commission approved a permit for the construction of 13 homes, including the subject residence, identified as Lot #18 (#6-86-181). Special Condition #2 of this permit states:

2. Lagoon Impacts. Prior to transmittal of the coastal development permit, the approved site plan shall be subject to Executive Director written approval in consultation with the Dept. of Fish and Game, to assure provision of a minimum 100 ft. buffer between the proposed grading on Lots 17 and 18 and any wetland. Should it be required, prior to transmittal of the permit, the applicant shall record a deed restriction on Lots 17 and 18, in a form and content acceptable to the Executive Director, prior to any liens and encumbrances, which prohibits alteration of landforms, placements of removal of vegetation, or erection of any structures within the area on Lots 17 and 18 located within 100 ft. of any wetland.

Based on the plans submitted to the Commission at the time, the residence on the subject site was proposed to be located a minimum of 100 feet from the adjacent wetlands.

Although the subject site itself is fully developed, the proposed development involves the construction on the western side of the lot, including a pool, which would result in

development located closer to the lagoon wetlands and other off-site sensitive resources. However, a review of the site performed by a biological consultant in December 2004 determined that the subject parcel is located more than 600 feet from the edge of any wetland area. The biological report identifies a row of Torrey Pines located beyond the fenced property line to the west, and beyond that, upland area that is currently disturbed non-native grasslands (the Caltrans coastal sage scrub restoration site). Even taking into account potential fire clearing requirements, the report determined that no sensitive vegetation is located within 100 feet of the proposed addition.

Thus, the proposed addition would not directly negatively impact the adjacent environmentally sensitive habitat area or any rare species that may be located there. Nevertheless, the project does represent an increase in development on the lagoon side of the lot. Pushing development closer to the lagoon increases the opportunities for impacts to the lagoon resulting from noise, domestic animals, and exotic vegetation. The LUP requires that landscaping of properties adjacent to open space areas not use invasive plant species. In order to minimize or avoid any impacts from the proposed increase in development intensity, Special Condition #1 of amendment #6-86-181-A1 requires that the applicants submit a landscape plan indicating the type of existing vegetation on the lot, and which includes removal of any existing invasive species and replacement with fire resistant, native or drought-tolerant materials.

As noted above, in association with the construction of the retaining wall on the southern side of the lot, the applicants planted a row of exotic bamboo. The applicants have submitted a letter from a biological consultant stating, "bamboos are not considered invasive" (see Exhibit #7). However, a letter received from the California Department of Fish and Game indicates that the Department is "concerned because of the ability of this plant to quickly grow outside of the boundaries of the homeowner's property and onto the Reserve. Although bamboos are not known to spread by seed, the underground rhizomes are able to spread quickly" (see Exhibit #6). The letter goes on to note that the vegetation is already growing onto the adjacent open space reserve, and requests that the owner remove the bamboo, which has encroached onto the reserve, and either install root barriers or remove the bamboo altogether. The Commission's ecologist agrees that the presence of bamboo on the site could potentially be a problem for the adjacent natural habitat.

The subject site is located in a highly visible and scenic area. Due to the extensive landscaping on both the subject site and the surrounding lots, the majority of the development on the site is well shielded from public views. The bamboo was not included or required in the landscaping plan originally submitted with the subdivision, but it does contribute to the canopy of vegetation on the site that reduces the visual impact of the existing residence from views from Interstate 5, and maintaining this canopy is necessary to help shield the proposed addition on this site.

Therefore, Special Condition #1 of amendment #6-86-181-A1 also requires that the applicant remove the bamboo and replace it with non-invasive, drought-tolerant vegetation that will provide a screening function. In this manner the visual protection will be maintained, and the potential threat to the lagoon will be removed.

In summary, the proposed project is adjacent to a coastal sage scrub mitigation site and the sensitive resources of the San Dieguito Lagoon. The project does involve increasing the intensity and mass of development on the lagoon-side of the structure. However, the proposed development will maintain a greater than 100 ft. buffer from off-site sensitive resources and as conditioned to remove the bamboo and any other invasive exotic vegetation on the site, the proposed development will not negatively impact the adjacent environmentally sensitive habitat or have any adverse impacts on rare species. Therefore, the project is consistent with the resource protection policies of the certified LCP.

4. Runoff/Water Quality. In addition to the policies cited above, the certified Torrey Pines Community Plan contains the following policies regarding the protection of water resources:

Residential Development Guidelines

The following additional guidelines should also be incorporated into single-family residential development.

2. Natural runoff control measures should be implemented to direct runoff toward the street and not toward open space areas and to eliminate erosion and siltation of biologically sensitive areas...

The subject site is located adjacent to a lagoon and both wetland and upland sensitive biological resources. In order to reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, Special Condition #3 is attached to amendment #6-86-181-A1. The condition requires that runoff from the proposed addition's roof area and other impervious surfaces associated with the addition and the pool be directed into the landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site. Directing runoff through landscaping is a well-established BMP for treating runoff from small developments such as the subject proposal. As conditioned, the proposed development will serve to reduce any impacts to water quality from the project to insignificant levels.

6. Public Access. The Coastal Act states:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

[...]

(2) Adequate access exists nearby, or,

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

As the proposed development will occur between the first public roadway (Mango Way) and the sea (San Dieguito Lagoon in this case), a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act and the certified LCP.

While the proposed development is located inland of the coast, public access and recreational opportunities exist at nearby San Dieguito Lagoon. There is an existing publicly-accessible trail and easement located adjacent to the subject site to the north. However, the proposed residential addition will be located entirely on the developed portion of the site, mainly on the southwestern portion of the lot, and will not have any effect on public access. Therefore, the proposed development is consistent with the public access policies of the Coastal Act and the certified LCP.

7. Unpermitted Development. Unpermitted development has occurred on the subject site consisting of the construction of a swimming pool, placement of concrete slab, and a 356 sq.ft. residential addition. The proposed project includes a request for the after-the-fact approval of the pool, placement of concrete slab in preparation for a residential addition, and a 356 sq.ft. residential addition that were constructed without a coastal development permit. Additional unpermitted development includes the recordation of an amendment to the subdivision's CC&Rs on July 19, 2004, that purports to eliminate the lot restrictions that were previously required and recorded as a deed restriction for the above referenced parcel pursuant to the Commission's approval of CDP #F7453. To address this concern, Special Condition #1 of amendment F7453-A2 amends special condition #3 of the underlying permit to require the applicant to re-record the CC&Rs that were altered to restate the original lot development restrictions so that there is no conflict among the recorded documents or doubt about the continued applicability

of those restrictions. To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #5 of amendment #6-86-181-A1 and Special Condition #2 of amendment #F7453-A2 require that the applicant satisfy all conditions of both amendments that are prerequisite to the issuance of the amendments within 180 days of Commission action. In order to ensure that the addition is constructed as proposed, Special Condition #6 of amendment #6-86-181-A1 requires that as-built plans be submitted within 60 days of project completion, or within 60 days of a significant work stoppage.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the certified City of San Diego LCP and the public access and recreation policies of the Coastal Act. Approval of the permit amendment does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

8. Local Coastal Planning. The subject site is planned and zoned for residential development in the certified City of San Diego Local Coastal Program. As conditioned, the proposed development is consistent with the City's development standards for an addition to a single-family residence on the subject site, as well as with the provisions of the Torrey Pines Community Plan. As conditioned, the project is consistent with all policies of the certified LCP and the Commission finds that approval of the subject project will not prejudice the ability of the City of San Diego to continue to implement its certified Local Coastal Program

9. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the certified City of San Diego LCP as well as with the public access and recreation policies of the Coastal Act. Mitigation measures, including conditions addressing landscaping, color, drainage, and future development on the site will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.